IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 232 OF 2005

SHRI FERMINO COUTINHO ....Petitioner

Versus

DR. JAIME VILANOVA BARRETO (EXPIRED) AND ANR.,OR M.JACKSON,RAIA, SALCETE GOA. ....Respondents

Ms. Amira Razaq, Advocate for the Petitioner.
Shri M.P. Almeida, Advocate for the Respondent No.1.

Coram:- R. M. LODHA, J.

Date:- 27th October, 2005

P.C.:

Heard Ms. A. Razaq, the learned Advocate for the Petitioner and Shri M.P. Almeida, the learned Advocate for the Respondent No.1.

2. Learned Advocate for the Respondent No.1 relied upon a Judgment of this Court in the case of Comunidade of Saligao v. Mhalpa Manguesh Nagvekar and another (1998 (1) Goa L.T. 156D).

3. The present petition has been filed by the petitioner aggrieved by the Order dated 23rd March, 2005 whereby the Reference Court has declined to stay the reference proceedings. The petitioner before the Reference Court made an application to stay the reference proceedings as the issue of agricultural tenancy was subjudice before the Mamlatdar.

4. In the light of the pleadings of the parties, it is true that the issue has been framed by the Reference Court as to whether Party No.I (petitioner herein) proves that he is tenant in respect of the acquired land. After the Issues were framed including the aforesaid Issue on 05.08.2004, the

petitioner wanted the issue of tenancy being referred to the Court of Mamlatdar. The Reference Court observed that though the issue has been framed to the effect whether the Party No.I (present petitioner) proves that he is tenant of the acquired land, it was not clear as to whether Party No.I was claiming right under the Tenancy Act or under the Land Revenue Code. In the opinion of the Reference Court, the Party No.I was claiming fishing rights. In this backdrop, the Reference Court passed the order that the prayer of the present petitioner for referring the issue to the Court of Mamlatdar cannot be entertained. However, the Reference Court granted liberty to the present petitioner to seek declaration of his leasehold rights in respect of the acquired land by approaching the competent Court. The Order dated 18th November, 2004 is not challenged in this Writ Petition. In this backdrop, the contention of the learned Advocate for the petitioner that the issue of tenancy ought to have been referred to the Tenancy Court and that until the tenancy Court decides the said issue further proceedings should have been stayed by the Reference Court cannot be accepted. It is true that the petitioner has now moved the Mamlatdar's Court for adjudication of his right of tenancy. But for want of any challenge to the Order dated 18.11.2004, the impugned Order passed by the Trial Court refusing to stay further proceedings in the Reference Court cannot be said to suffer from any error of law or jurisdiction. It is pertinent to notice that the Reference Court while declining the prayer of the petitioner to stay reference proceedings observed in the impugned order that if the Party No.I (petitioner herein) succeeds in the competent Court as an agricultural tenant, the petitioner can always move the Court under S.151 of the Code of Civil Procedure.

5. Be that as it may, in view of the fact that the Order dated 18th November, 2004 has not been challenged by the petitioner, the impugned Order passed by the Reference Court declining to stay the reference proceedings cannot be faulted.

Writ petition does not deserve to be entertained. Dismissed in limine.

R. M. LODHA, J.

sl.